

## CHAPTER III

### METHODOLOGY OF RESEARCH

#### A. Type of Research

This legal research will be conducted based on normative legal research. Normative legal research is also called doctrinal legal research, it means that normative legal research is performed and directed by reviewing secondary data or library materials.<sup>1</sup>

Cohen and Olson defined legal research as follows:

*“Legal research is the process of finding the law that governs activities in human society. It involves locating both the rules which are enforced by the states and commentaries which explain or analyze these rules.”*<sup>2</sup>

Jacobstein and Mersky also defined legal research as follows:

*“...seeking to find those authorities in the primary sources of the law that are applicable to a particular situation. The search is always first for mandatory primary sources, that is, constitutional or statutory provisions of the legislature, and court decisions of the jurisdiction involved. If these cannot be located then the search focuses on location persuasive primary authorities, that is, decision from courts other common law jurisdictions...*

*When in the legal search process primary authorities cannot be located, the searcher will seek for secondary authorities”*<sup>3</sup>.

This research uses statute approach and analytical approach. Statute approach means that the researcher uses the legislations as the basis for

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<sup>1</sup> Amirrudin and H. Z. Asikin, 2006, *Pengantar Metode Penelitian Hukum*, Jakarta, PT. Grafindo Persada, p. 118

<sup>2</sup> Morris L. Cohen and Kent C. Olson, 2013, *Legal Research in a Nutshell*, Eleventh Edition, USA, West Publishing Corporation, p.1

<sup>3</sup> Johnny Ibrahim, 2013, *Teori dan Metode Penelitian Hukum Normatif*, Malang, Banyumedia Publishing, p. 45

conducting the research. Any legal rules are the focus and become the central topic into the research<sup>4</sup>, because it would tell regulations such as Convention relating to the Status of Refugees 1951 and Universal Declarations of Human Rights or other document relating to the issues of refugees. The using of case approach in normative legal research aims to understand the implementation of legal norms which is conduct in legal practice pertaining to the Rohingya case.<sup>5</sup>

## **B. Data Sources**

This legal research uses data sources taken from the literatures that consist of primary legal sources, secondary legal sources, and tertiary legal sources.

### **1. Primary legal sources**

The primary legal sources consist of legally binding material bound to all elements and refer to the several legislations related to the refugees consist of:

- a. Universal Declaration of Human Rights
- b. The 1951 Convention relating to the Status of Refugees
- c. The 1967 Protocol relating to the Status of Refugees
- d. The 1945 Constitution of the Republic of Indonesia
- e. Law No. 39 of 1999 on Human Rights

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<sup>4</sup> Johnny Ibrahim, *Ibid.*, p. 302

<sup>5</sup> *Ibid.*, p. 321.

## 2. Secondary legal sources

The secondary legal source is a legal material that explain the materials that have been described in the primary legal materials namely:

### a. Books;

- 1) Romsan, Achmad. 2003. Pengantar Hukum Pengungsi Internasional: Hukum Internasional dan Prinsip-Prinsip Perlindungan Internasional (UNHCR), Bandung, Sanic Offset;
- 2) Wagiman, 2012, Hukum Pengungsi Internasional, Sinar Grafika, Jakarta.

### b. Scientific journals;

- 1) Gunawan, Yordan & Priambodo, Gatot, Burma's Rohingya Case in International Law Perspective, *Media Hukum*, Vol. 20 No. 1, 2013, Yogyakarta: Fakultas Hukum Universitas Muhammadiyah Yogyakarta.

### c. Seminar papers related to the issue;

### d. Other related documents;

### e. Trusted internet sites.

### f. Other non-legal documents related to this research.

### 3. Tertiary legal sources

Tertiary legal sources are legal materials to support or provide explanations and instructions regarding the primary legal materials and a secondary data that serves to expand and enrich the knowledge of author to understand the problems of refugee and also useful to support this undergraduate thesis.

- a. Law dictionary, like Black's Law Dictionary written by Bryan A. Garner; and
- b. English dictionary, like Oxford Learner's Pocket Dictionary;
- c. Indonesian Dictionary, like Kamus Bahasa Indonesia written by Yuyus Badudu

### **C. Method of Collecting Data**

In this research the author used the method of collecting data in this by literature learning. This research conducted in library as the main source. The author finds data or research information through reading scientific journals, reference books and materials available in the library of publications. By using data that require a deep analysis of literature studies, the author read, analyzed, other data which are related to this topic.

#### **D. Method of Data Analysis**

The data were analyzed systematically through juridical qualitative. Systematically means that the data was analyzed based on international law and Indonesian law, especially relating to the issue human rights, but focus on the protection of Rohingya Refugees in Indonesia, according to the International Refugee Law. Juridical qualitative means that it would be connected with the principle of law, convention and other related-regulations.<sup>6</sup>

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<sup>6</sup> Mukti Fajar ND, Yulianto Achmad, 2009, *Dualisme Penelitian Hukum*, Yogyakarta, Pencil Komunika. p. 123.